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## Timesharing Property; Assessment for Ad Valorem Tax: "Time" is of the Essence

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## COMMENTS

### Timesharing Property; Assessment for Ad Valorem Tax: "Time" is of the Essence

#### INTRODUCTION

Condominium ownership on a timesharing basis, until recently, has been a concept unknown to the common law.<sup>1</sup> Thus far, it has generated little litigation.<sup>2</sup> State legislation and regulation of timesharing has been sparse, and limited in nature.<sup>3</sup> One of the major problems faced by state legislatures is the development of a method for determining the value of the timeshare estate for purposes of property taxation. The major difficulty arises from trying to place a value on vacation exchange rights,<sup>4</sup> which allow the owner of a timeshare estate<sup>5</sup> to exchange his timeshare period with that of another owner at a different resort. This feature is unique to the timeshare estate and its value depends upon the time of year during which the timeshare period occurs.

This Comment will focus on a recent attempt by the California

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1. "Except as expressly modified by this Act and notwithstanding any contrary rule of common law, a grant of an estate in a unit conferring the right of possession during a potentially infinite number of separated time periods creates an estate in fee simple. . . ." Uniform Law Commissioners' Model Real Estate Time-Share Act, § 1-103 (1980).

The Model Real Estate Time-Share Act was approved as a Uniform Act by the National Conference of Commissioners on Uniform State Laws in 1979. It was officially changed to a Model Act in August, 1980.

2. In *Board of County Comm'rs. v. Colorado Bd. of Assessment*, 628 P.2d 156, 158 (Colo. Ct. App. 1981), the court held that timeshare property was an estate in land, and the assessment procedure involved a separate assessment of each timeshare estate by first assessing the entire timeshare project, then dividing the assessment among the individual units. However, the decision does not address the issue of whether the assessor should value each *timeshare period individually, taking into consideration vacation exchange rights*, see *infra* notes 63-64 and accompanying text, or whether each *timeshare unit* should be valued separately and then assessed two percent of the tax due from each timeshare period holder. See *infra* note 107 and accompanying text.

3. The first legislation aimed directly at the concept of timesharing was introduced by Hawaii in 1963. The bill sought to create a unique interest in real property defined as the "time period unit." This new interest was not a tenancy in common or other common law interest. Horizontal Property Act, HAWAII REV. STAT. ch. 514 (1976). With the rapid growth of the timeshare industry, other states have subsequently enacted timesharing legislation. See *infra* note 5.

4. See *infra* notes 63-64 and accompanying text.

5. Some states' statutes refer to the timeshare interest in land as "Timeshare Estate." CAL. REV. & TAX. CODE § 998 (West Supp. 1985). See *infra* note 7. Other states refer to it as "Time-share Real Property." FLA. STAT. ANN. § 192.037 (West Supp. 1985). See *infra* note 101. The term "timeshare estate" will be used in this Comment.

Legislature to create certainty and uniformity in determining the full value tax base<sup>6</sup> of timeshare estates subject to property tax through the enactment of section 998 of the California Revenue and Taxation Code.<sup>7</sup>

First, this Comment will define ad valorem tax and the timeshare estate. Next, the Comment will discuss the theories for determining valuation. In addition, it will examine recently enacted section 998 and discuss the reasons why the legislative purpose<sup>8</sup> behind its enactment cannot be achieved. The Comment will also look at timesharing statutes enacted by other states. Finally, a solution will be presented which not only achieves the legislative purpose behind section 998, but also fulfills the needs of other states which have enacted, or plan to enact, timesharing legislation.

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6. Full value tax base is the assessed value of the property. A tax rate is applied to the full value tax base to determine the amount of ad valorem tax to be levied on the property. Factors used to determine the value are, among others, acquisition cost (*see infra* note 73 and accompanying text), and comparison to other like properties. *See infra* note 7. The tax rate in California under article XIII A is one percent. CAL. CONST. art. XIII A.

7. Section 998 provides in pertinent part:

(a) The full value of a timeshare estate or a timeshare use subject to tax under this division shall be determined by finding the real property value of the interest involved and shall not include the value of any nonreal property items, including, but not limited to, vacation exchange rights, vacation conveniences and services, and club memberships. Accordingly, the full value of a timeshare estate or timeshare use may be determined by reference to resort properties, condominiums, cooperatives, or other properties which are similar in size, type and location to the property subject to timeshare ownership and are not owned on a timeshare basis. The aggregate assessed value of all the timeshare estates or uses relating to a single lot, parcel, unit, or other segment of real property shall be determined by adding (1) the fair market value of the similar lot, parcel, unit, or other segment not owned on a timeshare basis, and (2) an amount necessary to reflect any increase or decrease to the market value attributable to the fact that the property is marketed in increments of time, or by any alternative method which will determine the real property value without regard to any nonreal property items which may be included.

(b) Nothing in this section shall authorize a reassessment of real property as a result of the creation or transfer of a timeshare interest in the property unless the creation or transfer of the timeshare interest constitutes a change of ownership under Chapter 2 commencing with Section 60 of Part 2 and Section 2 of Article XIII A of the California Constitution.

(c) For purposes of this section, "timeshare estate" and "timeshare use" shall have the meanings set forth in Section 11003.5 of the Business and Professions Code, and "timeshare interest" shall refer to both timeshare estates and timeshare uses.

(d) Nothing in this section shall be construed as requiring the assessment of any property at less than fair market value as required by Section 401.

CAL. REV. & TAX. CODE § 998 (West Supp. 1985) [hereinafter cited as § 998].

8. "The Legislature finds that the development and sale of timeshare interests is an important and growing segment of the real estate industry in California and that certainty and uniformity in the assessment of such interests is important to the continued development of timeshare projects in this state." 1983 Cal. Stat. c. 1110, p. — § 1 (1983).

As a prerequisite to analyzing the valuation of the timeshare estate, *ad valorem tax* and the *timeshare estate* need to be defined. " 'Ad valorem property taxation' means any source of revenue derived from applying a property tax rate to the assessed value of the property."<sup>9</sup> The ad valorem tax is the greatest source of revenue for local governments.<sup>10</sup>

The *timeshare estate* and *timeshare property* are generally thought of as resort property.<sup>11</sup> The timeshare project begins with a condominium. Some have as few as ten individual condominium units, while others may have several hundred condominium units.<sup>12</sup> Each individual condominium unit is then divided into fifty-two, one-week timeshare periods. The consumer then purchases a block of time, usually one or two weeks, during which he has the exclusive right of use,<sup>13</sup> ownership,<sup>14</sup> or both. This gives the title holder a recurrent interest in land on an annual basis.<sup>15</sup> That is to say, his legal interest in the condominium unit arises only during the timeshare periods for which he is the title holder.

There are three main types of timeshare properties in use in the United States today: the vacation license; tenancy in common with an agreement to use a specific period of time; and interval ownership.<sup>16</sup>

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9. CAL. REV. & TAX. CODE § 2202 (West Supp. 1985).

10. O. OLDMAN & F. SCHOETTLE, STATE AND LOCAL TAXES AND FINANCE at 137 (1974).

11. URBAN LAND INSTITUTE, TIMESHARING II at 2 (S. Bloch, W. Ingersoll & S. Madsen ed. 1982).

The Urban Land Institute is an independent, nonprofit research and educational organization incorporated in 1936 to improve the quality and standards of land use and development.

The Institute is committed to conducting practical research in the various fields of real estate knowledge; identifying and interpreting land use trends in relation to the changing economic, social, and civic needs of the people; and disseminating information which can facilitate the orderly and more efficient use and development of land.

*Id.*

12. RESORT CONDOMINIUMS INTERNATIONAL, INC., 2 ENDLESS VACATION 4 (Feb. 1983). Endless Vacation is the annual exchange directory for Resort Condominiums International, Inc. [hereinafter cited as RCI]. See *infra* note 27 and accompanying text.

13. "A 'time-share use' is a license or contractual or membership right of occupancy in a time-share project which is not coupled with an estate in the real property." CAL. BUS. & PROF. CODE § 11003.5(c) (West Supp. 1985).

14. "A 'time-share estate' is a right of occupancy in a time-share project which is coupled with an estate in the real property." *Id.* at § 11003.5(b).

15. "A 'time-share project' is one in which a purchaser receives the right in perpetuity, for life, or for a term in years, to the recurrent, exclusive use or occupancy . . . annually or on some other periodic basis. . . ." *Id.* at § 11003.5(a).

16. Davis, *Timesharing Ownership—Legal and Practical Problems*, 48 ST. JOHN'S L. REV. 1183, 1184 (1974). Davis' article discusses the types of timeshare estates, financing the timeshare project, marketing the timeshared unit, and real estate taxes. *Id.* at 1187, 1190. As to which method of valuation should be used, Davis stated that "[a]

The vacation license is the forerunner to the other two types of timeshare interests. The developer, or the owner of the entire project, retains the fee interest, and the purchaser of the timeshare interest receives a recurring time period each year for a specific number of years. The time periods are sold in multiples of one week, and the purchaser's interest is "right-to-use" or, in effect, no more than a long-term lease. The vacation license was initially marketed as an investment. In 1973, however, the Securities and Exchange Commission [hereinafter referred to as SEC], held that the vacation license type of project was to be classified as a security and; therefore, had to be registered with the SEC.<sup>17</sup> To avoid registration with the SEC, tenancy in common with an agreement to use a specific time period and interval ownership were statutorily created.<sup>18</sup>

The tenancy in common with an agreement to use a specific time period is a common-law estate in land.<sup>19</sup> It consists of the conveyance of individual interests in the fee to the purchasers as tenants in common.<sup>20</sup> The tenants in common then execute an agreement whereby the holders of the individual interests agree among themselves for the use of specific periods of time.<sup>21</sup>

The interval ownership also involves a common law estate.<sup>22</sup> However, unlike the tenancy in common with an agreement to use a certain time period, interval ownership is tailored to grant a revolving or recurring estate for a specified number of years,<sup>23</sup> with a remainder over as tenants in common at a designated future date.<sup>24</sup> This means that "[a]t the termination of the revolving estate, the parties, as tenants in common, have the option to either seek partition or to reinstate the previous agreement" for a revolving or re-

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basis which disregards the time-sharing sales price pitfalls may likewise prove undesirable. It seems advisable to approach the tax assessor prior to the inception of the project for the purpose of reaching an agreement to minimize 'surprises' later on." *Id.* at 1193.

17. The SEC Securities Act Release No. 5347 (Jan. 4, 1973) lists the factors which will convert condominium offerings into investment contracts necessitating registration with the SEC. A predominant factor is the presence of a rental pool. *See also* SEC v. Hare, Brewer, and Kelly, Civ. No. 73-2175 (N.D. Cal. Dec. 6, 1973).

18. *See supra* notes 12-14.

19. Davis, *supra* note 16, at 1187.

20. The tenancy in common with an agreement to use a specific time period does not present the problem under § 998 that the interval ownership presents. With the former, any exchange rights are determined among the owners themselves. Therefore, the owners do not have to comply with the regulations imposed by the commercial exchange networks. *Id.* at 1185-86.

21. *Id.*

22. *Id.* at 1187.

23. *Id.* Most timeshare projects expressly state in the condominium documents that the recurring estate for years continued for forty years.

24. *Id.*

curing estate for a specified number of years.<sup>25</sup> Each estate is separate from the others in the same unit. Therefore, during the period of the revolving estate for years, the individual interests are not subject to partition, or to tax liens on the interests of the other timeshare period owners.<sup>26</sup> However, commercial exchange networks<sup>27</sup> have been organized through which arrangements can be made for the individual interests to "comingle" in a beneficial sense. By means of computer, the timeshare interest owner can exchange his timeshare interest with that of another owner, either at the same project or at another resort in a different location.<sup>28</sup>

As the timeshare industry grows, several states have enacted statutes which more broadly define the common-law estate.<sup>29</sup> For instance, California's statute,<sup>30</sup> which will be the main focus of this Comment, defines "timeshare project" as one in which a purchaser receives the right in perpetuity, for life, or for a term in years, to the recurrent, exclusive use or occupancy of a lot, parcel, segment of real property, annually, or on some other basis.<sup>31</sup> "Timeshare interest" is the right of occupancy in a timeshare project coupled with an interest in the real property.<sup>32</sup> "Timeshare use" is a license or contractual membership right of occupancy in a timeshare project which is *not* coupled with an estate in the real property.<sup>33</sup> Both the "timeshare interest" and the "timeshare use" are subject to assessment for the purpose of levying an ad valorem tax.<sup>34</sup> Thus, as the timeshare industry becomes more widespread, the need for legislation addressing methods to be used to determine the value of the timeshare estate for tax purposes becomes more pressing. As such, the assessment of the "timeshare estate" for taxation purposes and the consequent problems arising from trying to determine a fair and equitable value are the main themes of this Comment.

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25. *Id.* at n. 13.

26. "The tax on a timeshare estate that is separately assessed pursuant to this section shall be a lien solely on the timeshare estate. . . ." CAL. REV. & TAX. CODE § 2188.9(e) (West Supp. 1985).

Although IRC § 74039(a) authorizes the federal government to enforce a tax lien or subject the property to the payment of such lien, the IRS has issued a private letter ruling stating that IRC 7403(a) would be strictly applied in the timeshare setting. Ltr. Rule 7831029 ¶ 2630, 78 (Aug. 4, 1978).

27. At present, Resort International Condominiums, Indianapolis, Indiana, is the largest of the exchange networks. Currently, it arranges exchanges between over 700 timesharing condominiums, worldwide. RESORT CONDOMINIUMS INTERNATIONAL, INC., 2 ENDLESS VACATION 7 (Feb. 1983).

28. *See infra* note 64 and accompanying text.

29. *See* discussion *infra* notes 101-19 and accompanying text.

30. *Id.*

31. *See supra* note 15.

32. *See supra* note 14.

33. *See supra* note 13.

34. *See supra* note 7.

The determination of value has been extremely important to owners of real property in California since the adoption of article XIII A of the California Constitution.<sup>35</sup> That amendment prescribes both a set tax rate and a defined value to which the rate is to be applied.<sup>36</sup> Further, under article XIII A, it is important for both the state and the owner of real property to use a method to determine a "full cash value" tax base that achieves uniformity and certainty while reflecting an accurate value, as section 2(a) calls for all property to be assessed at "full cash value"<sup>37</sup> on the 1975-76 tax bill. Thus, real property which was not assessed up to its "full cash value" on the 1975-76 tax bill is now required to be reassessed in order to reflect such a value.<sup>38</sup> In addition, section 2(a) requires the reassessment of any new construction or change in ownership occurring after the 1975-76 assessment at "full cash value."

Section 2(b) allows the "full cash value" tax base to reflect, from year to year, the inflationary rate, not to exceed two percent for any given year. It also allows a reduction in the "full cash value" tax base as shown by the consumer price index or other comparable data for the area.

Section 1(a) mandates that the amount of any ad valorem tax on real property shall not exceed one percent (1%) of the "full cash value" of such property.<sup>39</sup>

Although article XIII A defines "full cash value" as the value to

35. CAL. CONST. art. XIII A was originally California's Proposition 13, the Jarvis-Gann Act. *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 218, 583 P.2d 1281, 1283, 149 Cal. Rptr. 239, 241 (1978) [hereinafter cited as *Amador*]. It was adopted June 6, 1978 by an initiative measure. *Id.* Article II, § 8 of the California Constitution grants an initiative power to the electors to propose statutes and amendments to the California Constitution, and to adopt or reject them. CAL. CONST. CODE art. II, § 8 (adopted Nov. 8, 1966, as article IV, § 22; renumbered article II, § 8, June 8, 1976). It provides that "[a]n initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment." *Id.* It must be certified to have been signed by electors equal in number to eight percent, in the case of an amendment, of the votes for all candidates for Governor in the last gubernatorial election. *Id.* It further provides that "[t]he Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to the general election. The Governor may call a special election for the measure." *Id.*

36. CAL. CONST. art. XIII A.

37. Under the authority of article XIII A, "fair market value" is replaced with "full value," and "although fair market value and full value were once synonymous, that is not longer the case." *Roy E. Hanson, Jr., Mfg. v. County of Los Angeles*, 27 Cal. 3d 870, 873, 616 P.2d 810, 812, 167 Cal. Rptr. 828, 830 (1980). The value to which the one percent ad valorem tax under article XIII A is to be applied, "whether it be the fair market or not, shall be known for property tax purposes as the full value." *Id.*

38. *Amador*, *supra* note 35, 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978).

39. California Constitution article XIII A only applies to *real property*. California Revenue and Taxation Code § 401 allows other rates to be applied to personal property.

which the set tax rate is to be applied, it offers no guidance in providing a method by which "full cash value" is to be determined. Consequently, any guidance has come from the courts.

### I. APPROACHES TO VALUATION

In the past, courts have wrestled with the definition of "full cash value" and methods by which to arrive at the "full cash value" tax base. In *Guild Wineries and Distilleries v. Fresno County*,<sup>40</sup> the court gave its approval to both the market data approach,<sup>41</sup> and the acquisition cost method of determining the "full cash value" of the taxable property.

In *Guild*, the appellant purchased the Roma Wine Division of Schenley Industry. The property purchased was of a kind which is sold infrequently. The court, in holding that neither the county assessor nor the board of supervisors are bound, conclusively, by any one method, gave its approval to any method which would best determine the "full cash value" of the taxable property.<sup>42</sup> The court said that the most accurate way of arriving at the "full cash value" of the taxable property is to refer to market data on recent sales of that property and comparable properties.<sup>43</sup> However, the court observed that if the property is of a kind seldom exchanged, it will have no market value.<sup>44</sup> In those instances, the purchase price, or acquisition cost, may be considered as a factor in determining the "full cash value" tax base.<sup>45</sup>

Post article XIII A cases were concerned with a new set of problems. For the most part, these problems concerned the assessment of new construction and the reassessment of real property that had changed ownership.<sup>46</sup> The California Supreme Court's decision in *Amador Valley Joint Union High School District v. State Board of Equalization*,<sup>47</sup> supplied some answers to the problems.

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40. 51 Cal. App. 3d 182, 124 Cal. Rptr. 96 (1975) [hereinafter cited as *Guild*].

41. The market data approach uses data on recent sales of like properties. *Id.* at 187, 124 Cal. Rptr. at 99.

42. The court in *Guild*, *supra* note 40, noted that ". . . the assessor, subject to requirements of fairness and uniformity, may exercise his discretion. . . ." *Id.* at 188, 124 Cal. Rptr. at 100 (quoting *De Luz Homes, Inc. v. County of San Diego*, 45 Cal. 2d 546, 564, 290 P.2d 544, 555 (1955)).

43. *Guild*, *supra* note 40, 51 Cal. App. 3d at 187, 124 Cal. Rptr. at 99.

44. This is the case with timeshare estates. Due to their relative newness, coupled with the fact that developers have overbuilt in many areas, a buyer's market has been created. However, resales have been minimal or nonexistent. In most projects, the developer is still in control. He usually has a contract with a real estate marketing company which is under an obligation to sell the developer's units before handling any resales from private owners. *Id.*

45. *Id.*

46. See e.g., *Amador*, *supra* note 38.

47. *Id.*



In *Amador*, the plaintiff taxpayers brought a class action against the California Board of Equalization. The taxpayers alleged that article XIII A was unconstitutional because it violated the Equal Protection Clause of the fourteenth amendment. Their contention was that two like properties, similarly situated, could be assessed at different values.<sup>48</sup> The taxpayers argued that under article XIII A inequality would result if two like properties were originally purchased at the same time, for the same price, and one property later changed ownership, selling for a higher price than originally paid, because a higher "full cash value" tax base would result.<sup>49</sup>

The *Amador* court upheld the constitutionality of article XIII A. Moreover, the court held that all real property would be taxed at its value as of the date of acquisition,<sup>50</sup> rather than at its current value. The court further stated that the "'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to some unforeseen, perhaps unduly inflated, current value."<sup>51</sup>

This "acquisition value" system was recently approved in *Schoderbek v. Carlson*.<sup>52</sup> In *Schoderbek*, fifteen plaintiffs instituted a class action against the assessor of Santa Clara County, contending that assessing property that was purchased prior to article XIII A by using a *hypothetical* purchase price, and assessing property purchased after article XIII A by using the *actual* purchase price, was in violation of the equal protection provided them by the fourteenth amendment.

The court disagreed. It held that the use of the *actual* purchase price did not deny equal protection.<sup>53</sup> The court's rationale was that the same "procedure" was used in reaching the computer calculated "full cash value" tax base for both pre- and post-article XIII A assessments. The only difference in the process was that,

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48. *Id.* at 233, 583 P.2d at 1292, 149 Cal. Rptr. at 250.

49. *Id.* The petitioners argued that "by reason of the 'rollback' of assessed value to the 1975-1976 fiscal year, two substantially identical homes, located 'side by side,' and receiving identical governmental services, could be assessed and taxed at different levels depending upon their date of acquisition." *Id.* Such a disparity in tax treatment, petitioners urged, constitutes an arbitrary discrimination in violation of the federal equal protection clause of amendment XIV, sec. 1. *Id.*

50. *Id.* at 235, 538 P.2d at 1293, 149 Cal. Rptr. at 251.

51. *Id.*

52. 152 Cal. App. 3d 1027, 199 Cal. Rptr. 874 (1984) [hereinafter cited as *Schoderbek*].

53. *Id.* at 1034, 199 Cal. Rptr. at 878. "In our view, article XIII A created two classifications of property taxpayers, namely those who owned property as of March 1, 1975, and those who purchased property after said date." *Id.* For the purposes of article XIII A, § 2 (a) defines "full cash value" as the amount of cash or its equivalent, measured when the property is purchased. *Id.* In most cases, this represents the acquisition cost. *Id.*

instead of using the hypothetical figure for the fair market value of the property being appraised, the assessor now used the actual purchase price. In addition, the court felt that an "acquisition value" system would enable each property owner to estimate his future tax liabilities with some degree of assurance and certainty.<sup>54</sup>

At approximately the same time that the judiciary was wrestling with *Amador* and *Schoderbek*, the California Legislature realized that the development and sales of timeshare interests was an important and growing segment of the real estate industry in California. Accordingly, the legislature sought uniformity and certainty in determining value for tax assessments of such interests.<sup>55</sup> It realized that a significant portion of the purchase price of a timeshare interest could be attributed to features and services that were not, according to the legislature, *real property* interests and, therefore, not taxable under article XIII A.<sup>56</sup> Arguably, these nonreal property items could include, among other items, vacation exchange rights.

Thus, the court's search for certainty and uniformity in determining the "full cash value" tax base for timeshare estates, coupled with the legislature's notion that exchange rights were not real property, brought about the enactment of new laws. Specifically, California Revenue and Taxation Code section 998<sup>57</sup> was enacted in order to prescribe a procedure to arrive at the "full value" tax base of timeshare estates.<sup>58</sup> Although the statute did not mandate any particular approach to use in determining the "full value," it did offer a comparison to like-condominiums not owned on a timeshare basis as an approved method.<sup>59</sup> In addition, section 998 provided that the "full value" tax base of a timeshare estate should not include the value of any nonreal property items, such as vacation exchange rights.<sup>60</sup> Finally, section 998 stated that it should not be construed as requiring the assessment of *general* property at less than fair market value as required by California Revenue and Tax Code section 401.<sup>61</sup>

Nevertheless, while timeshare legislation has become essential due to the rapid growth of the timeshare industry and while section

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54. *Id.* at 1036-37, 199 Cal. Rptr. at 879. The *Schoderbek* court seemed concerned with certainty in taxation as did the California Legislature when they enacted § 998. See *supra* note 8.

55. See *supra* note 8.

56. See *supra* note 7.

57. CAL. REV. & TAX. CODE § 998 (West Supp. 1985). See also *supra* notes 7-8.

58. *Id.*

59. *Id.*

60. *Id.*

61. CAL. REV. & TAX. CODE § 998(d). Section 401 states that "[e]very assessor shall assess all property subject to general property taxation at its full value." CAL. REV. & TAX. CODE § 401 (West Supp. 1985).

998 appears to be a step in the right direction, it could give rise to several problems. First, problems may arise from not including the value of the vacation exchange rights in the "full value" tax base. Additional problems could arise because the statute is not clear as to whether the value of the vacation exchange rights could be taxed under a different statute. Finally, section 998 is not clear as to whether the value of the vacation exchange rights could be assessed at a later date, if their value had been overlooked by the tax assessor for several years.

## II. FACTORS OF VALUE IN TIMESHARE ESTATES

In addressing the problem of valuation posed by section 998, it is important to note that there are two basic factors of value in a timeshare estate. The first is the underlying real property interest. The second is the right to exchange one's interest with that of another in a different location.<sup>62</sup> The problem is that while vacation exchange rights are not directly taxable under section 998 and article XIII A, these rights *could* have a major impact on the value of the underlying property interest, which *is* taxable.

### A. Vacation Exchange Rights

The right to exchange a certain timeshare period with one in a different resort and location is a major factor to be considered when placing a value on the timeshare estate.<sup>63</sup> The right to exchange is a factor unique to the timeshare estate and is contingent upon the "time of year owned," which is the time of year during which the interest recurs. The "time of year owned" is the major factor in determining the vacation exchange rights of the owner of the timeshare interest,<sup>64</sup> and it contributes considerably to the purchase price of the timeshare interest. In many projects, the same unit will sell for nearly twice as much if the time of year owned is the *prime time period* for that location.<sup>65</sup> For example, a person owning a

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62. Under § 998, the value of the vacation exchange rights are not to be included in the full value tax base subject to taxation under article XIII A. CAL. REV. & TAX. CODE § 998 (West Supp. 1985).

63. The right to exchange is the major reason for purchasing a timeshare interest. Most owners buy near their permanent residences and exchange for other locations for vacation purposes. In 1982, 50,000 exchanges were requested through RCI. RESORT CONDOMINIUMS INTERNATIONAL, INC., 2 ENDLESS VACATION 7 (Feb. 1983).

64. Resort Condominiums International assigns a color code to each season of the year. Red is for prime time, white for intermediate, and blue for the traditionally slow time period of tourist activity in a given location. Owners of red time periods have unlimited exchange rights and, consequently, these periods cost considerably more than do the white and blue time periods. The owners of white time periods may exchange only for other white time periods or blue time periods. Blue time periods may exchange only with other blue time periods. *Id.* at 291-92.

65. For example, blue time periods at Fantasy Island Resort, Daytona Beach, Flor-

one-week timeshare estate in Indio, California,<sup>66</sup> during the month of July, when temperatures are well in excess of 100 degrees, will find it virtually impossible to exchange it for the same one-week time period in a project located on the beach at Del Mar, California,<sup>67</sup> where resort facilities are in high demand during that same July time period. Also, the owner of a small one-bedroom unit obviously cannot exchange it for a larger three-bedroom unit. Furthermore, some locations are given a higher priority than others.<sup>68</sup> Projects located at the beach, ski resorts, and major tourist attractions are given top priority. Therefore, a person who owns a timeshare unit in a less desirable location will find it difficult to exchange it for a unit in a better location.<sup>69</sup> These exchange rules make sense, as they preclude a person's purchasing a unit in a less desirable location during an unpopular time period for a low price, and then exchanging it for one that was purchased in a better location during the high-demand season at a much higher price.<sup>70</sup>

### III. DETERMINING VALUE

At first glance, developing a formula by which to determine the "full value" tax base under section 998 probably seemed an easy task to the legislature. Begin by ascertaining the value of the entire timeshare interest; next, determine the value of the "time of year owned"; and, finally, subtract the value of the latter from that of the former in order to determine the "full cash value" tax base subject to the one percent ad valorem tax under article XIII A. For example, a timeshare estate in a project located at the beach might cost \$10,000 during the summer months, as they are the high-demand time periods. Conversely, a timeshare estate in that same unit during the winter, a low-demand time period, might sell for only \$7,000. The \$3,000 difference in the cost of the two timeshare periods looks to be the value of the "time of year owned." However, placing a value on the "time of year owned" is not as simple as it may have appeared to the legislature. In addition, trying to separate the two factors of value might prove to be problematic.

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ida, sell for \$4,000. A red time period which occurs during the "Firecracker 400" stock car race week (July 4) sells for \$8,000. *Id.*

66. June 15 through September 14 are "blue" time periods at the Indian Palms Country Club, Indio, California. *Id.* at 99.

67. March 1 through November 30 are "red" time periods at the Winners Circle Beach & Tennis Resort, Del Mar, California. There are no "blue" time periods in Del Mar; hence the owners of "blue" time periods in Indio cannot exchange for *any* time period in Del Mar. *Id.* at 101.

68. *Id.* at 291.

69. *Id.* at 291-93.

70. *See supra* notes 64-65.

IV. PROBLEMS ARISING FROM TRYING TO SEPARATE THE  
FACTORS OF VALUE

The initial problem arises when one tries to separate the value of the "time of year owned," which is in effect the vacation exchange rights, from the real property interest subject to tax under article XIII A. An additional problem is that section 998 leaves two questions unanswered. First, assuming the value of the "time of year owned," *i.e.*, vacation exchange rights, are separated for article XIII A purposes, can their value then be subject to a tax other than that imposed under article XIII A?<sup>71</sup> Second, if the tax assessor overlooks assessing the value of the vacation exchange rights for a period of time under another form of property tax, can he then impose a tax upon their value at a later date?<sup>72</sup>

## A. Initial Problem—Acquisition Cost Method

Using the acquisition cost method for determining value,<sup>73</sup> if the *entire* amount of the difference in cost (\$3,000 in the example in section III above), is the amount to be attributed to vacation exchange rights and, therefore, *not* to be included in the full value tax base under section 998, the result will be inequity and nonuniformity. The purchaser of the more expensive high-demand time period will benefit. The \$3,000 value given to the vacation exchange rights is to be deducted from the \$10,000 acquisition cost. This leaves a \$7,000 tax base to the owner of the high-demand time period who has unlimited vacation exchange rights. However, the benefit to the owner of the same unit whose interest is during the low-demand time period is uncertain at best. His vacation exchange rights are limited so, obviously, the deduction attributable to his limited vacation exchange rights should be less than the \$3,000 value given to the unlimited exchange rights. Still, he does have *some* vacation exchange rights; therefore, he should receive some deduction from his \$7,000 acquisition cost in determining his full value tax base subject to tax under article XIII A. Unfortunately, section 998 does not address this issue, thereby frustrating the legislative purpose and creating *more* uncertainty and lack of uniformity.<sup>74</sup>

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71. "Nothing in this section shall be construed as requiring the assessment of any property at less than fair market value as required by § 401." CAL. REV. & TAX. CODE § 998(d) (West Supp. 1985). See also *supra* note 61.

72. See *infra* notes 89-100 and accompanying text.

73. The acquisition cost method was given approval in both *Amador*, *supra* note 38, and *Schoderbek*, *supra* note 52.

74. CAL. REV. & TAX. CODE § 998 (West Supp. 1985). See also *Ice Capades, Inc. v. County of Los Angeles*, 56 Cal. App. 3d 745, 128 Cal. Rptr. 717 (1976) (Formulas to be used in assessing property for tax purposes are to be determined by local tax assess-

On the other hand, if the entire amount of the difference in acquisition costs (\$3,000) is *not* to be attributed to vacation exchange rights, then under section 998 that portion not attributed will have to be included in the full value tax base, subject to the one percent ad valorem tax under article XIII A. Under this approach, and in accordance with section 998, it would appear that a different full value tax base would have to be determined each year depending upon whether the owner makes an exchange, or elects to use his timeshare period in its actual location.<sup>75</sup> Although this does not present a statutory problem, it does have adverse effects on both the tax assessors and the owners of the timeshare periods.

The owners are entitled to separate assessments each year under section 2188.8 of the California Revenue and Taxation Code.<sup>76</sup> However, separate assessments would place a heavy burden upon the tax assessors. In a timeshare project containing forty individual units, each of which is divided into fifty-two one-week timeshare

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sors. "[D]evelopment of a formula of apportionment is primarily the task of the authority imposing the tax.")

75. At present, due to the newness of the timeshare industry and the relatively recent enactment of § 998, there is no case law to look to for guidance.

76. Section 2188.8 provides in pertinent part:

(a) Whenever the assessor receives a written request for separate assessment of a timeshare project, . . . the assessor shall, . . . separately assess the individual interests in the project described in subdivision (b) if the conditions specified in subdivision (c) have been met. Whenever a timeshare project becomes subject to separate assessment, it shall continue to be so subject in subsequent fiscal years and once a request for separate assessment is made, it is binding on all future owners and occupants of the project.

(b) The interest in a timeshare project that is to be separately assessed is the value of the right of recurrent, exclusive use or occupancy of real property, annually or on some other periodic basis, for a period of time that has been, or will be, allotted from the use or occupancy periods into which the project has been divided.

(c) A separate assessment may not be made by the assessor under this section unless:

(1) The person making the request certifies that the request for separate assessment has been approved in the manner provided in the organizational documents of the organization involved for approval of matters affecting the affairs of the organization generally; and

(2) A diagrammatic floor plan of the improvements, a copy of the documents setting forth the procedures for scheduling time and units to each timeshare interest owner, and a list of every timeshare interest owner, with a date notation, thereon showing when, according to the organization's records, each interest was acquired, have been filed with the assessor. A plot map of land showing the location of the improvements on the land need not be filed unless requested by the assessor. The organization shall file an annual statement for each succeeding assessment year, on or before April 1, with the assessor, setting forth any changes to the required information known to the organization. The list or other information provided pursuant to this section is not a public document and shall not be open to public inspection, except as provided in Section 408 of the Revenue and Taxation Code.

CAL. REV. & TAX. CODE § 2188.8 (West Supp. 1985).

periods, 2,080 separate assessments would be needed each year.<sup>77</sup> In addition, it would create more expense for the owners of the timeshare interests, as section 2188.8 also provides for a fee to be charged for the initial and ongoing costs, not to exceed the actual cost, of the separate assessment and billing with respect to a timeshare project.<sup>78</sup> Similar problems arise if the comparison approach method is used.

### *B. Comparison Approach*

Section 998 gives approval to the comparison approach method of determining the full value tax base.<sup>79</sup> However, problems similar to those discussed above under the acquisition cost method are also present when using the comparison approach. First, the value of the entire timeshare project is determined by comparing it with a non-timeshare condominium of like size and in a similar location. Next, each of the 2,080 individual timeshare period owners' interests has to be allocated a portion of that value as the full value tax base. However, under Section 998, the value of the vacation exchange rights must first be deducted. The problem, as above, appears in trying to determine the value of the vacation exchange rights. The comparison approach is ineffective to set a value for vacation exchange rights. No comparison can be made with a non-timeshare condominium, as vacation exchange rights are unique to the timeshare estate. Therefore, the acquisition cost approach must be used to determine their value.

Under this approach, the entire timeshare condominium must first be compared with a similar non-timeshare condominium. Assuming that a similar non-timeshare condominium development contains forty individual units, each of which has a value of \$100,000, the total value of the development would be \$4,000,000. Accordingly, the entire timeshare condominium development would have a value of \$4,000,000. If the \$4,000,000 is then determined to be the full value tax base of the entire timeshare development, it must be allocated among the 2,080 owners of individual timeshare periods. If it is allocated equally among the 2,080 owners, each would have a full value tax base of \$1,923. Next, the value of the vacation exchange rights must be deducted in order to comply with section 998. However, this could give rise to a negative "full value" tax base. If the entire \$3,000 is the value of the vaca-

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77. *Id.* at § 2188.9(a).

78. "The county may charge a fee for the initial cost of separately assessing and implementing subdivision (g), not to exceed the actual cost, which may be collected on the tax bill to the timeshare project, which fee shall be deposited in the county's general fund." *Id.* at § 2188.9(i).

79. *See supra* note 7 and accompanying text.

tion exchange rights in the hands of the owner of the high-demand time period, and it is then subtracted from the \$1,923 full value tax base, the result would be a negative full value tax base. The same problem arises when trying to determine the full value tax base for the owner of the low-demand timeshare period. What amount is to be deducted for the value of his vacation exchange rights? Section 998 falls short in trying to solve these problems. The next problem is that of determining whether the value of the vacation exchange rights may be subject to taxation under some other statute.

*C. Possible Taxation Under California Revenue and Taxation Code Section 401*

Section 401, California Revenue and Taxation Code, provides for the assessor to assess all property subject to general property taxation at its "full cash value."<sup>80</sup> The word "property" includes all matters and things capable of private ownership;<sup>81</sup> therefore, under section 401 and article XIII, section 1,<sup>82</sup> the vacation exchange rights could be assessed and taxed under a theory other than their being real property. Additional theories used in support of taxation were addressed in *Exchange Bank v. County of Sonoma*.<sup>83</sup>

*Exchange Bank* was an action by a taxpayer to recover taxes paid under protest. The taxpaying bank leased an IBM data processor. The court noted that it was mounted on wheels and was easily movable; and it was connected to the building only by an electrical cord plugged into a wall socket. Taxes were assessed on the IBM unit by the local board of supervisors, who asserted that the unit was a *fixture* of realty and, therefore, subject to local ad valorem taxation on *personal* property.<sup>84</sup> The court held that the data processor was not a fixture. The opinion of the court is short, and the court's reasoning is not set out. However, it can be inferred that ease of removal, and the ability to separate the personal property item from the real property interest were factors which the court considered in deter-

80. CAL. REV. & TAX. CODE § 401 (West Supp. 1985). See *supra* note 61 for text of § 401.

81. *Morrison v. Barham*, 184 Cal. App. 2d 267, 7 Cal. Rptr. 442 (1960). "In California all property must be taxed unless an exemption is authorized by the state Constitution or granted by the laws of the United States (footnote omitted). It is taxable in proportion to its value, and the word 'property' includes all matter and things capable of private ownership." *Id.* at 272, 7 Cal. Rptr. at 445.

82. "All property is taxable and shall be assessed at the same percentage of its fair market value." CAL. CONST. art. XIII § 1 (a).

83. 59 Cal. App. 3d 608, 131 Cal. Rptr. 216 (1976) [hereinafter cited as *Exchange Bank*].

84. Fixtures become part of real property and are subject to property tax. CAL. REV. & TAX. CODE §§ 104 and 105 (West 1970 and Supp. 1984).



mining whether the personal property was subject to ad valorem taxation.

Applying this probable rationale of *Exchange Bank* to vacation exchange rights, it would appear that they could be taxed as *personal property*. Unlike the IBM unit, vacation exchange rights are closely related to the real property interest as they are not removable or easily separated. Therefore, the legislature<sup>85</sup> could impose a personal property tax on the vacation exchange rights under article XIII, section 2, which provides for property taxation on all forms of property not exempt under any other provision of article XIII.<sup>86</sup> Although exchange rights are exempt from the ad valorem taxation under article XIII A, the legislature may not have intended them to be totally exempt from taxation. Section 998(d) provides that “[n]othing in this section shall be construed as requiring the assessment of any property at less than fair market value as required by section 401.”<sup>87</sup> Therefore, under section 401 and article XIII, section 2, the vacation exchange rights could be assessed at their “full cash value.”<sup>88</sup> This leads us into the third problem.

#### D. Liability for Overlooked Assessments

Section 998 fails to answer the question of whether the tax assessor can later assess the vacation exchange rights if he presently overlooks other possible theories for allowing their assessment. In *Hewlett-Packard Co. v. County of Santa Clara*,<sup>89</sup> the court allowed the tax assessor to reassess the taxpayer’s property at a higher value under the theory of “escape assessment.”<sup>90</sup> There, Hewlett, the manufacturer of electronic equipment, brought an action to recover personal property taxes paid under protest. The tax assessor had initially assessed the value of Hewlett’s property under a manufacturing costs method.<sup>91</sup> Later, upon discovering that the property was being used by Hewlett’s test equipment, it was reassessed at a

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85. “The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption.” CAL. CONST. art. XIII, § 2.

86. Exemptions are given to property owned by the state, property owned by a local government, and property owned by churches. CAL. CONST. art. XIII, §§ 3(a)-(b), 11(a).

87. CAL. REV. & TAX. CODE § 998(d) (West Supp. 1985). See *supra* note 7 for text of § 998(d).

88. CAL. REV. & TAX. CODE § 401 (West Supp. 1985). See also *supra* note 61 and accompanying text.

89. 50 Cal. App. 3d 74, 123 Cal. Rptr. 195 (1975) [hereinafter cited as *Hewlett*].

90. *Id.* at 83, 123 Cal. Rptr. at 200.

91. *Id.* at 77, 123 Cal. Rptr. at 196. The manufacturing cost method is used to determine the value for inventory. The value given to inventory is less than that given to property held for production.

higher value under the trade level method.<sup>92</sup> The difference in value was then levied on for tax purposes by the county tax assessor, even though he had initially failed to use the proper method.<sup>93</sup> In holding the reassessment valid, the court noted that "[n]o meaningful distinction can be perceived between a taxpayer who has received a windfall by reason of an assessor's honest mistake and who is an innocent beneficiary of official misconduct; in either event, the local government incurs losses of tax revenue to which it is rightfully entitled."<sup>94</sup>

Applying the *Hewlett* rule to levying against the "escaped assessments" of vacation exchange rights, the tax assessor could contend that he honestly misinterpreted section 998 and thereby failed to assess the vacation exchange rights under section 401. This was the case in *General Dynamics Corp. v. County of San Diego*.<sup>95</sup>

In *General Dynamics*, an audit was performed by the local tax assessor on General Dynamic's property several years after the property was initially assessed at a lower "inventory" rate.<sup>96</sup> The court allowed the escape assessment to be levied on the property using a different method, which determined the value to be higher than previously assessed.<sup>97</sup>

The court held that an "escape assessment can, and *must*, be levied despite the Legislature's failure to specifically provide for one . . . ."<sup>98</sup> In addition, the court stated that "[t]he county [tax] assessor's duty to assure uniformity in taxation bestows upon him the power to retroactively collect taxes due, regardless of the relative culpability of the parties."<sup>99</sup>

Under the holding in *General Dynamics*, it seems clear that the county tax assessor could levy escape assessments on the vacation exchange rights that had been overlooked for several years, regardless of the reason. This clearly goes against the certainty sought by the legislature in enacting section 998.

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92. *Id.* The trade level method is used for fixed assets. Fixed assets are given a higher value than inventory.

93. *Id.*

94. *Id.* at 81, 123 Cal. Rptr. at 199 (citations omitted).

95. 108 Cal. App. 3d 132, 166 Cal. Rptr. 310 (1980).

96. *Id.* at 135-36, 166 Cal. Rptr. at 312. *See supra* note 91.

97. The property was later assessed under the trade level method for fixed assets, hence placing a higher value on it. *Id.* at 136-37, 166 Cal. Rptr. at 312-13 [hereinafter cited as *General Dynamics*].

98. *Id.* at 137, 166 Cal. Rptr. at 313 (emphasis added).

99. *Id.* at 137, 166 Cal. Rptr. at 313. The court based its holding on the fundamentals of taxation mandated by the California Constitution article XIII, rather than Revenue and Taxation Code § 531. Section 531 provides in part: "If any property belonging on the local roll has escaped assessment, the assessor shall assess the property on discovery at its value on the lien date for the year for which it escaped assessment." *Id.* at 136-37, 166 Cal. Rptr. 312-13.

It is apparent, from the above discussion, that trying to exclude the value of vacation exchange rights from the full value tax base subject to tax under article XIII A, will be problematic. Problems arise, not only from attempting to place a value on the vacation exchange rights in order to exclude such value from the tax base, but also from determining whether that value not taxable under article XIII A is subject to taxation under a separate taxation theory or statute.<sup>100</sup> Perhaps looking at timeshare statutes enacted by other states will give some guidance not only to California, but also to other states contemplating the need for timeshare legislation in the future.

#### V. TIMESHARE STATUTES FROM OTHER STATES

There are four major themes present in timeshare statutes. These themes are: defining the timeshare estate, determining the value of the timeshare estate, other tax-related issues, and timeshare regulation in general.

In 1982, Florida enacted section 192.037<sup>101</sup> in an attempt to deal with the problems associated with ad valorem taxation and the timeshare estate. Although section 192.037(2) directs the tax assessor to value each timeshare development by combining the value of each individual timeshare period contained therein, unlike California, it does not mention a prescribed method by which the value of the individual timeshare interests are to be determined.<sup>102</sup> However, section 192.001 does provide that property in general be assessed at its fair market value, which is to be a "just valuation."<sup>103</sup> In arriving at a "just valuation," the statute sets forth several factors of value to be considered by the tax assessor in determining value of property subject to taxation. These factors include: present cash value, location, size, cost, and other factors *unique* to the property.<sup>104</sup> The factor that is unique to the timeshare interest is the time of year owned, which determines the owner's vacation exchange rights.

100. See generally *supra* note 61.

101. FLA. STAT. ANN. § 192.037 (West Supp. 1985). Section 192.037 was one of the first comprehensive timeshare statutes to be enacted. It provides for (1) the managing entity to be considered as an agent of the timeshare period titleholder, (2) the assessed value of each timeshare to be the value of the combined individual timeshare periods contained therein, (3) ad valorem taxes to be allocated by the managing entity based upon the proportions provided by the property appraiser, (4) the right to contest or appeal assessments, (5) the managing entity to collect and remit the taxes, and (6) an escrow account for the deposit of taxes. *Id.*

102. *Id.* at § 192.037(2).

103. "'Assessed value of property' means an annual determination of the just or fair market value of an item or property. . . ." FLA. STAT. ANN. § 192.001(2) (West Supp. 1985).

104. FLA. STAT. ANN. § 193.011 (West Supp. 1985).

However, in a 1982 survey of Florida tax assessors in counties where timeshare properties were located, it was found that only ten percent took the time of year owned into account when determining the assessed valuation of the timeshare interest.<sup>105</sup> The majority of tax assessors valued the timeshare development as a whole, and then divided the assessment between the timeshare units on a relative floor space basis. The owner of each timeshare period was then assessed two percent of the total assessed value of the unit in which he held his timeshare interest.<sup>106</sup> It appears that the Florida legislature has given a free hand to the tax assessors in determining a method by which to determine "just valuation." However, unless the time of year owned is considered in the assessed valuation, inequity will result. The property of the high-demand time period will be assessed at the same value as that of the owner of the low-demand time period. The result will be "unjust valuation," as the high-demand timeshare period has a greater value because it has unlimited exchange rights.<sup>107</sup>

Some states which purport to regulate timesharing taxation do not address the method of valuation in their timeshare statute. Hawaii, for example, enacted chapter 514E-3 in 1980.<sup>108</sup> Like other timeshare statutes, the Hawaiian enactment defines the timeshare estate and, in addition, provides that the timeshare "plan manager, if any, shall be primarily liable for the payment of the real property taxes due on the timeshare units under his authority."<sup>109</sup> The Hawaii statute, however, does not prescribe a method by which to determine the value of the timeshare development or the value of the individual timeshare interests. The tax assessor must turn to Real Property Tax Law Chapter 246.<sup>110</sup> Section 246-10 supplies a list of factors which are to be used in assessing *any* property subject to taxation.<sup>111</sup> As in most state statutes, these include acquisition cost

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105. *Time Sharing Industry Review* at 26 (Dec.-Jan. 1982).

106. The allocation is based on fifty individual timeshare periods in each individual unit. *Id.* at 26.

107. This can be distinguished from the equal protection argument raised by the taxpayers in *Amador*, 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978), see *supra* note 38. In *Amador*, the court rejected the equal protection argument. The court's reasoning was that notwithstanding the two like properties being originally purchased for the same price, subsequent resales of one property for progressively higher prices allowed for the disparity in the assessments. In the timesharing setting, however, a lack of disparity arises from *not* including the value of the vacation exchange rights, the result being that both timeshare estates are assessed at the same value, even though one actually has more value due to unlimited vacation exchange rights. *Id.*; see *supra* notes 7 and 101.

108. HAWAII REV. STAT. § 514E-3 (1983).

109. *Id.* at § 514E-3(a).

110. HAWAII REV. STAT. § 246 (1976 and Supp. 1983).

111. The factors, among others, are the selling price and data from comparable sales

and comparison to like properties.<sup>112</sup> Other states do not in any way address the taxation issue in their timeshare statutes. For instance, in 1982, Connecticut enacted chapter 734b, entitled "Timesharing Plans".<sup>113</sup> Section 42-103x of that act gives only a general definition of the timeshare estate and sets out regulations as to its sales.<sup>114</sup> The chapter does not address either taxation or valuation.<sup>115</sup> Property tax assessment and valuation are regulated under a separate chapter, entitled "Property Tax Assessment."<sup>116</sup> Section 12-63 calls for property to be assessed at its fair market value.<sup>117</sup>

The statutory definition of the timeshare estate and the general timeshare regulations do not present the problems as does the statutory mandating of a prescribed method by which to determine a value for taxation. Defining the timeshare interest as an estate in land merely allows the owners to hold title in fee simple,<sup>118</sup> and most timeshare statutes are regulatory in nature, and are directed primarily toward consumer protection.<sup>119</sup> These are unquestionably important issues, but ones that are fairly easy to solve legislatively. The taxation issues, however, are much more troublesome.

The legislative purpose behind California's section 998 is to create uniformity and certainty.<sup>120</sup> Florida's statute seeks "just valuation."<sup>121</sup> Other states call for a "fair market value"<sup>122</sup> as a tax base. No state statute has come to grips with the real problems arising

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of like property valued at cost of replacement less depreciation. HAWAII REV. STAT. § 246-10 (1976 and Supp. 1983).

112. *Id.*; see also *supra* notes 7 and 105.

113. CONN. GEN. STAT. ANN. §§ 42-103w-103bb (West Supp. 1985).

114. CONN. GEN. STAT. ANN. § 42-103x (West Supp. 1985).

115. CONN. GEN. STAT. ANN. §§ 42-103w-103bb (West Supp. 1985).

116. CONN. GEN. STAT. ANN. §§ 12-40-121 (West 1983 and Supp. 1985).

117. CONN. GEN. STAT. ANN. § 12-63 (West 1983). For tax purposes, the expressions "actual valuation," "market value," "market price," and "fair value" are synonymous and usually mean the figure fixed by sales in the ordinary business transactions, and they are established when other property of the same kind in the same location has been bought and sold in so many instances that a value may be reasonably inferred. *National Folding Box Co. v. City of New Haven*, 146 Conn. 578, 153 A.2d 420 (1959).

118. See, e.g., COLO. REV. STAT. § 38-33-110 (8) (1982) which defines "time-span estate" as a combination of: [a]n undivided interest in a present estate in fee simple in a unit, the magnitude of the interest having been established by the time of the creation of the time-span estate either by the project instruments or by the deed conveying the time-span estate" and "[a]n exclusive right to possession and occupancy of the unit during an annually recurring period of time defined and established by a recorded schedule set forth or referred to in the deed conveying the time-span estate."

119. See, e.g., N.C. GEN. STAT. § 93A-40 (Supp. 1983), which provides in part: "From and after July 1, 1984, it shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesman without first obtaining a real estate broker or salesman license issued by the North Carolina Real Estate Commission. . . ."

120. See *supra* note 8 and accompanying text.

121. See *supra* note 104 and accompanying text.

122. See *supra* note 117 and accompanying text.

from placing a value on the timeshare estate. That problem is the value of the vacation exchange right. State legislatures do not know what to do with the new property right. California mandates that it should be excluded from the full value tax base.<sup>123</sup> The Florida legislature recognized that it has a value, but gives the local tax assessor the power to deal with it.<sup>124</sup> Other states seem to simply ignore vacation exchange rights.<sup>125</sup> Because these vacation exchange rights are an inherent part of the timeshare estate and because their value accounts for a considerable portion of the acquisition cost of the timeshare interest, their value must be included in the full value tax base if uniformity and equity are to be achieved when assessing timeshare estates subject to taxation. In addition, the full value tax base must be reasonable. Otherwise, when the tax rate is applied, the resultant tax bill will be such that it acts as a deterrent to prospective purchases of timeshare estates.<sup>126</sup> The following method is a solution to the problem arising from placing a value on the timeshare estate.

## VI. SOLUTION

The better method by which to determine the full value tax base of the timeshare estate is to first determine the value of the entire timeshare development by using the comparison method discussed above.<sup>127</sup> Using the above example,<sup>128</sup> this would place a value of \$1,923 on each individual timeshare estate. Next, the value of the vacation rights is to be determined by using the acquisition cost approach. Assume that a timeshare development has three seasonal time periods: a high demand season during which timeshare estates sell for \$10,000; an intermediate demand season during which they sell for \$8,000; and a low demand season during which they sell for \$6,000. The acquisition cost of the high demand vacation exchange

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123. See *supra* note 7 and accompanying text.

124. See *supra* note 101 and accompanying text.

125. See *supra* notes 8 and 120 and accompanying text. In addition, N.C. GEN. STAT. § 93A-41 (Supp. 1983) merely defines timeshare terms.

126. The reasoning behind owning a timeshare estate, is to allow the owner to take an annual vacation at a relatively low cost. Assuming a timeshare interest is purchased initially for \$7,500, and the owner then pays an annual maintenance fee of \$63, his cost for a first-class resort vacation spread over forty years would be only \$250 per week. The vacation cost is in effect "locked in," regardless of what inflation may do to the cost of hotel/motel type vacations. In addition, the value of the timeshare property is increasing each year as property values in general increase. However, if an additional \$60-\$70 is added to the annual cost because of property tax, the benefit begins to wane. The benefit is further eroded if the timeshare interest is sold. Under *Amador*, *supra* note 38, and Schoderbek, *supra* note 52, the property must be reappraised at its new acquisition cost. This could, in some instances, double the tax burden.

127. See *supra* note 79 and accompanying text.

128. *Id.*

rights would be the difference between its acquisition cost (\$10,000), and that of the low demand timeshare estate (\$6,000). The value of the high demand vacation exchange rights would then be \$4,000. The value of the exchange rights of the intermediate timeshare estate would be the difference between its selling price (\$8,000), and that of the low demand timeshare estate (\$6,000), leaving a value of \$2,000. The value given to the vacation exchange rights of the low demand timeshare estate would be one-half the value of the intermediate vacation exchange rights; thus, \$1,000. However, two reasons exist for not allocating the entire acquisition cost of the vacation exchange rights to the \$1,923 for determining the full value tax base.

First, the comparison approach was used to determine the value of the entire development. Unless some adjustment is made to the value of the vacation exchange rights, their value would be considerably higher in relation to the value allocated to each individual timeshare interest. Therefore, the result would not be equitable.

Second, if the full acquisition cost of the vacation exchange rights is added to the \$1,923 allocated to each of the individual timeshare interests, the full value tax base would be unreasonably high. Under California's tax scheme, a one percent tax rate would be levied on both the \$1,923 and on the value of vacation exchange rights. This would mean a total tax bill of \$59.23 (\$19.23 plus \$40.00), in the case of the high demand timeshare interest. The total tax bill would be excessive when one considers the primary purpose for purchasing a timeshare vacation, which is low cost vacations. Therefore, only a percentage of the acquisition cost of the vacation exchange rights should be included in the full value tax base. For example, if they were assessed at ten percent of their acquisition costs, then the respective values of the seasonal periods would be \$40, \$20, and \$10. Added to the \$1,923 each one-week timeshare estate would have respective full value tax bases of \$1,963, \$1,943, and \$1,933. Under California's article XIII A, this would mean respective bills of \$19.63, \$19.43, and \$19.33.

By using the above method for determining the value of timeshare estates subject to property tax, both the uniformity and certainty sought by the California legislature<sup>129</sup> will be achieved. In addition, it fits into the statutory schemes of other states that have already enacted timeshare legislation.<sup>130</sup> Furthermore, it would not act as a detriment to the timeshare industry.<sup>131</sup> Finally, it could

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129. See *supra* note 8 and accompanying text.

130. See *supra* notes 101, 108, 111, 113, and 118-19.

131. See *supra* note 127 and accompanying text.

serve as guidance for states that are considering timeshare legislation.

#### CONCLUSION

The rapid growth of the timeshare industry and the increasing number of timeshare estates sold provide an opportunity for additional tax revenue for local governments.<sup>132</sup> However, measures must be taken to ensure fairness in arriving at a tax base for timeshare estates. The major problem is the valuation of the vacation exchange rights. If the value of the exchange right is excluded, equal protection issues might arise. Therefore, legislatures should enact statutes that provide a method by which to value the timeshare estate, which include factors unique to the timeshare estate, mainly vacation exchange rights. The purpose of this Comment is to offer a viable solution to this problem.

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132. The timesharing of real property . . . has shown astonishing growth since the Urban Land Institute published its first study on timesharing in 1977. Gross annual sales in the timeshare industry approached the \$1 billion mark in 1980.

\* The author was honored with the *Scriba Regis Award* by the 1984-85 Board of Editors of the CALIFORNIA WESTERN LAW REVIEW. This Comment was considered the best written student article of the year.